

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

M.A. MORTENSON COMPANY, a foreign
corporation,

Plaintiff,

v.

ZURICH AMERICAN INSURANCE
COMPANY, a foreign corporation,

Defendant.

Case No.

**DEFENDANT ZURICH AMERICAN
INSURANCE COMPANY'S
NOTICE OF REMOVAL**

King County Superior Court Case No.
21-2-13726-8 SEA

Defendant Zurich American Insurance Company ("Defendant"), by and through its attorneys, hereby removes the above-captioned action from the Superior Court of the State of Washington in King County to the United States District Court for the Western District of Washington. Removal is based on 28 U.S.C. § 1332 (diversity jurisdiction) and authorized by 28 U.S.C. §§ 1441 and 1446. As grounds for removal, Defendant states as follows:

I. PROCEDURAL BACKGROUND

1. Plaintiff served the above-captioned Summons and Complaint on Defendant on September 15, 2021. Copies of the Summons and Complaint are attached as Exhibit A.

II. STATE COURT ACTION

2. This is a water damage coverage dispute brought by the Plaintiff M.A. Mortenson Company ("Plaintiff") against its insurer, Defendant Zurich, for amounts owed under a builders risk policy. Plaintiff seeks a declaration of rights and Defendant's responsibilities under the

subject insurance policy and an award for its unpaid damages on the claim caused by Defendant's alleged breach of contract for failing to cover Plaintiff's losses, expenses, and damages.

III. TIME FOR REMOVAL

3. Defendant was served with the Summons and Complaint through the Washington State Insurance Commissioner on September 15, 2021. This Notice of Removal is timely pursuant to 28 U.S.C. §1446(b) because the Notice of Removal is filed within 30 days of service on Defendant.

IV. BASIS FOR REMOVAL

4. A party may seek removal of a state court action where the amount in controversy exceeds \$75,000 exclusive of interest and costs, and the action is between citizens of different states and/or citizens of a state and citizens or subjects of a foreign state. 28 U.S.C. § 1332(a)(1) – (a)(2).

A. Timeliness:

5. This Removal is timely because Defendant has filed this Removal pursuant and in accord with 28 U.S.C. § 1446(b). Defendant received a copy of the original Complaint less than 30 days before filing this Notice of Removal.

B. Amount in Controversy:

6. A defendant can establish the amount in controversy by the allegations in a complaint, or by setting forth facts in the notice of removal that demonstrate the amount in controversy exceeds \$75,000. *Kroske v. US Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005).

7. It is facially apparent from the nature of Plaintiff's claims alleged in the Complaint that the controversy exceeds \$75,000, exclusive of interest and costs. Plaintiff alleges in its complaint that it is entitled to payment of its remaining loss in the amount of \$6,449,138.

8. Pursuant to Local Rule W.D. Wash. 101(a), counsel for Defendant has a good faith belief that Plaintiff seeks damages in excess of the jurisdictional amount in this court.

9. Based on the above, Defendant has established that Plaintiff's alleged damages more likely than not exceed \$75,000.

C. Diversity of Citizenship:

10. The diversity of citizenship requirements of 28 U.S.C. § 1332 are satisfied in this case.

11. Plaintiff is a Minnesota corporation, licensed to do business in King County, Washington.

12. Defendant is an insurance company organized under New York law with its principal place of business in Schaumburg, Illinois.

13. In light of the above, there is complete diversity among the parties, and removal is proper under 28 U.S.C. §1332(a)(1) and (a)(2).

D. Venue:

14. King County is embraced within the United States District Court for the Western District of Washington, Seattle Division, and the state court action being removed is pending in King County. Thus, this Court is the proper venue for this action pursuant to 28 U.S.C. §1441(a).

IV. REQUIRED DOCUMENTS

15. Defendant will promptly file a copy of this Notice with the Clerk of the King County Superior Court and will give written notice to all adverse parties. 28 U.S.C. § 1446(d).

16. Pursuant to Local Rule W.D. Wash. 101(b), Defendant will also provide copies of all other documents from the State Court proceeding.

17. By removing this action to the Court, Defendant does not waive any defenses, objections, or motions available to it under state or federal law. Defendant expressly reserves the right to move for dismissal of Plaintiff's complaint under Rule 12 of the Federal Rules of Civil Procedure.

WHEREFORE, Defendant Zurich American Insurance Company requests that this action be removed to the United States District Court for the Western District of Washington pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and hereby requests that this Court retain jurisdiction for all further proceedings herein..

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1 DATED: October 14, 2021

2 LANE POWELL PC

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice. I hereby certify that the following document was sent to the following CM/ECF participant:

Attorneys for Plaintiff:

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and I hereby certify that I have e-mailed the document to the following non-CM/ECF participant who is co-counsel for Plaintiff but who is not currently admitted to the United States District Court for the Western District of Washington:

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Executed on the 14th day of October, 2021, at Seattle, Washington.

s/ Lou Rosenkranz

Lou Rosenkranz, Legal Assistant